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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 Respondent,

No. 2: 04-cr-0019 MCE JFM

11 vs.

12 RODNEY BUTLER,

13 Movant.

FINDINGS AND RECOMMENDATIONS

14 \_\_\_\_\_/  
15 Movant, a federal prisoner proceeding pro se, has filed a motion to vacate, set  
16 aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

17 The court's records reveal that movant has previously filed a motion to vacate, set  
18 aside or correct his sentence. The first motion was filed on September 19, 2011 and was denied  
19 on the merits on August 23, 2012.

20 Before movant can proceed with the instant motion he must move in the United  
21 States Court of Appeals for the Ninth Circuit for an order authorizing the district court to  
22 consider the application. "A second or successive motion must be certified as provided in  
23 section 2244 by a panel of the appropriate court of appeals." 28 U.S.C. § 2255; see also 28  
24 U.S.C. § 2244(b)(3). Therefore, the instant motion should be dismissed without prejudice to its  
25 refiling upon obtaining authorization from the United States Court of Appeals for the Ninth  
26 Circuit.

1           Accordingly, IT IS HEREBY RECOMMENDED that movant's December 26,  
2 2012 motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 be  
3 dismissed without prejudice.

4           These findings and recommendations are submitted to the United States District  
5 Judge assigned to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
6 days after being served with these findings and recommendations, movant may file written  
7 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
8 Findings and Recommendations." Movant is advised that failure to file objections within the  
9 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
10 F.2d 1153 (9th Cir. 1991).

11 DATED: February 7, 2013.

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14 UNITED STATES MAGISTRATE JUDGE

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16 butl0019.success.vac